UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION THIRTEEN

ARCHER WIRE INTERNATIONAL CORP. and
AMERICAN WIRE AND STAMPING CORP.
Employers
And Case 13-RC-21120
UNITED ELECTRICAL, RADIO AND MACHINE
WORKERS OF AMERICA (UE)
Petitioner
And
METAL PROCESSORS WORKERS UNION,
LOCAL NO. 16, AFL-CIO
Intervenor

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing on this petition was held December 1, 2003, before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board, to determine the relationship between the two corporate entities whose employees are encompassed in the historical unit that the parties stipulated was an appropriate unit for collective bargaining.[1]

I. BACKGROUND

The Petitioner seeks to represent a production and maintenance unit at Archer Wire International Corp. and American Wire and Stamping Corp. (herein referred to as either the corporate entities, or collectively as the Employer) that historically has been represented by the Intervenor. The record shows that the two corporate entities involved herein do business as a single entity, operate out of one facility, are engaged in an integrated operation, and employees work side-by-side regardless of which corporate entity's payroll they are on. As the unit sought

[1] Upon the entire record in this proceeding, the undersigned finds:
a. The hearing officer's rulings made at the hearing are free from error and are hereby affirmed.
b. The Employers are engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
c. The labor organizations involved claim to represent certain employees of the Employers.
d. A question affecting commerce exists concerning the representation of certain employees of the Employers within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

in the instant petition has been historically represented by the Intervenor, there were no issues regarding the appropriateness of the petitioned for unit, and the parties stipulated to the appropriate unit. However, the Intervenor raised a number of issues, which will be treated herein to the extent those issues are relevant or necessary to a determination on the appropriateness of conducting an election in the agreed upon unit.

II. ISSUES

Prior to the hearing and at the hearing the Intervenor sought a continuance, contending it had insufficient time to investigate the issues raised by the filing of the instant petition. The Intervenor contends that the Hearing Officer erred by failing to grant the continuance. Next the Intervenor contends that the Hearing Officer failed to obtain proof of the Board's jurisdiction over the involved two corporate entities that constitute the Employer and, therefore, the petition must be dismissed. Finally, notwithstanding being the incumbent representative in a historical unit and stipulating to the appropriateness of a combined unit of both of the corporate entities employees, the Intervenor asserted that nature of the relationship between the two corporate entities had to be established on the record.

III. DECISION

For the reasons discussed in detail below, I find that the parties had sufficient notice of filing of the petition and time to investigate any issues that they wished to raise. Accordingly, the Hearing Officer did not err in refusing to grant the Intervenor's motion for a continuance. I further find that the record sufficiently demonstrates the Board's jurisdiction over the Employer/corporate entities involved in the instant petition regardless of the Intervenor's failure to join in the jurisdictional stipulation. Finally, given the corporate entities current and historical consent to bargain in the combined unit and the parties' stipulation as to the appropriateness of that unit, I find it was unnecessary to explore the nature of that relationship on the record or resolve the issue of the relationship between the corporate entities. Nevertheless, the parties in their post-hearing briefs are in agreement that the two corporate entities constitute a single integrated Employer. Based on these findings:

IT IS HEREBY ORDERED that an election in the below describe bargaining unit be conducted under the direction of the undersigned at a time and place to be set forth in a subsequently issued notice of election:

> All full-time and regular part-time production and maintenance employees employed at the Employer's facility currently located at 7300 South Narragansett, Bedford Park, Illinois but excluding office and clerical employees, professional, technical, administrative employees, watchmen, guards and supervisors as defined by the Act and employees belonging to other unions that have collective bargaining contracts with the Employer.

III. DISCUSSION

A. Intervenor's Motion for a Continuance:

The instant petition was filed on November 17, 2003. The petition was faxed to the parties, including counsel for the Intervenor, on November 20, 2003. The record indicates that the Intervenor filed a Pre-Hearing Motion for Continuance on November 26, 2003, which was denied that same day. The Intervenor at the Hearing again requested a postponement to prepare the case. The Intervenor alleged that it did not have sufficient time to investigate the issues raised by the petition or to subpoena an Employer representative. The Hearing Officer denied the Intervenor's motion for a continuance The Intervenor argues that the Hearing Officer erred in failing to grant the continuance, which resulted in an incomplete record to make the necessary findings.

The question of whether a continuance is to be granted and its extent is a matter within the sound discretion of the Regional Director or the hearing officer. See, *Power Equipment Co.*, 135 NLRB 945 fn. 1 (1962). There is no showing that the Hearing Officer abused his discretion in denying Intervenor's motions for a continuance. Although the Intervenor argued that it needed more time to prepare for the hearing and to subpoena an Employer representative, the record shows that the Intervenor had notice of the petition on November 20, 2003 and, thus, had 11 days to prepare and subpoena anyone they needed to testify. Given the context of this case - the fact that the Intervenor is the incumbent bargaining representative, presumable with some degree of familiarity with the Employer's operations, and the limited issues raised by a petition seeking a historically established unit, 11 days to prepare is objectively sufficient and the Hearing Officer did not abuse his discretion in denying the continuance. Furthermore, as set forth below, the denial of the motions for continuance did not result in an incomplete record, and no prejudice occurred to any party in this proceeding, especially given the parties subsequent agreement on the essentially non-material issue of the relationship between the two involved corporate entities.

B. The Board's Jurisdiction

The Employer and Petitioner stipulated to fact's demonstrating that the Employer meets both the Board's statutory jurisdiction and its jurisdictional standards. The record reflects the Intervenor refused to stipulate on the basis that it had no knowledge as the validity of those facts. In its post election brief, the Intervenor argues that in the absence its entry into the jurisdictional stipulation, the Board was required to obtain competent record evidence to establish jurisdiction. The Intervenor asserts that the Hearing Officer failed to obtain record proof that the Employer meets the Board's jurisdictional standard.

Contrary to the Intervenor's assertion, I find that the record has sufficient proof that the Employer meets the Board's jurisdictional, both statutory jurisdiction and discretionary jurisdictional standard. The Employer, who has first hand knowledge of the facts, with the Petitioner willingly stipulated that the it was engaged in commerce within the meaning of the Act and are subject to the Board's jurisdiction based on the following commerce facts:

> Archer Wire International Corp. and American Wire and Stamping Corp. with a place of business located at Bedford Park, Illinois are engaged in the business of wire processing. During the past calendar year, a representative period, Archer Wire International Corp. and American Wire and Stamping each purchased and received materials valued in excess of $50,000 directly from suppliers located outside the State of Illinois.

I find this stipulation sufficient to establish the Board's jurisdiction regardless of whether the Intervenor joined in the stipulation. A stipulation to commerce facts is deemed to be an admission and, therefore, is substantive record evidence sufficient to establish *prima facie* the Board's jurisdiction. *Triton Construction Co.,* 191 NLRB 376 (1971). The Intervenor failed to enter into the stipulation based on a lack of knowledge, and there is no record evidence contrary to the commerce stipulation. Accordingly, the stipulation on commerce stands as an unrebutted *prima facie* showing that the Board has jurisdiction herein. Furthermore, the commerce stipulation is binding on the Employer in any subsequently related proceeding sufficient to establish *prima facie* the Board's jurisdiction, should such be necessary. *Midland Rubbish Removal Co.,* 298 NLRB 991 (1990); *Stephens Institute d/b/a Academy of Art College,* 241 NLRB 454, 455 (1979); *Kroger Co.,* 211 NLRB 363-64 (1974)

C. Relationship Between the Corporate Entities

Given the history of bargaining between the Employer and the Intervenor and the parties stipulation to the appropriateness of the unit, the resolution of the nature of the relationship between the two corporate entities involved herein is unnecessary to the determination of whether it is appropriate to conduct and election on the instant petition. Thus, given the historical context, an election could appropriately be directed in the stipulated unit regardless of whether the two corporate entities were separate employers as a historical multi-employer bargaining unit, were joint employers under *M.B. Sturgis, Inc.,* 331 NLRB 1298 (2000), or were a single employer. Notwithstanding the Intervenor's doubts at the hearing, the parties in their post-hearing briefs are all in agreement that the two corporate entities involved herein constitute a "single employer". The record evidence supports the parties' agreement. The term "single employer" applies to situations where apparently separate entities operate as an integrated enterprise in such a way that "for purposes, there is in fact only a single employer." *NLRB v. Browning-Ferris Industries,* 691 F. 2d 117, 112 (3d. Cir. 1982). The record clearly shows, that both entities are highly integrated, both functionally and administratively. Accordingly, to the extent it clarifies the record, I find that the two entities are a single employer.

IV. SUM

Based on the foregoing and the entire record herein, I have found that the Board has jurisdiction in this matter, that the Hearing Officer made no prejudicial errors, and that it is appropriate to direct an election in the historical unit as stipulated by the parties.

V. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned, among the employees in the unit found appropriate at the time and place set forth in the notice of intent to conduct

election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of the issuance of the notice of intent to conduct election, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. In addition, all employees who have been employed for a total of 30 days or more within a 12-month period immediately preceding the eligibility date for the election, or have had some employment in that period and have been employed 45 days or more within the 24-month period immediately preceding the eligibility date, are also eligible. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strikes who have retained their status, as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the unit who are in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are former unit employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by United Electrical, Radio And Machine Workers of America (UE); Metal Processors Workers Union, Local No. 16, AFL-CIO; or no labor organization.

VI. NOTICES OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

VII. LIST OF VOTERS

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is directed that 2 copies of an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the undersigned within 7 days from the date of the issuance of the notice of intent to conduct election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The undersigned shall make this list

available to all parties to the election. In order to be timely filed, such list must be received in Region 13's Office, Suite 800, 200 West Adams Street, Chicago, Illinois 60606 on or before the date which will be set forth on the notice of intent to conduct election. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

VIII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099-14th Street. N.W., Washington, DC 20570. This request must be received by the Board in Washington by December 30, 2003.

DATED at Chicago, Illinois this 16th day of December 2003.

Harvey A. Roth, Acting Regional Director
National Labor Relations Board
Region Thirteen
200 West Adams Street, Suite 800
Chicago, Illinois 60606